

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**  
**October 19, 2011**  
**Elisabeth A. Shumaker**  
**Clerk of Court**

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AMERICAN CONTRACTORS  
INDEMNITY COMPANY,

Plaintiff - Appellee,

v.

SHERRY BOEDING,

Defendant - Appellant,

and

JOHN ATAMIAN; NEW IMAGE  
INVESTMENTS, LLC,

Defendants.

No. 11-3285  
(D.C. No. 2:08-CV-02586-JWL)

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**ORDER**

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Before **LUCERO, O'BRIEN**, and **HOLMES**, Circuit Judges.

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The district court entered a Fed. R. Civ. P. 54(b) judgment in the proceedings underlying this attempted appeal on August 22, 2011. A notice of appeal was filed September 24, 2011. Following the filing of the notice of appeal, the district court transmitted a preliminary record to this court and this appeal was opened.

On initial review of the case, the court determined that any notice of appeal from the district court's judgment was due on or before September 21, 2011. Fed. R. App. P.

4(a)(1)(A). The notice of appeal was accordingly three days late. This court therefore issued an order permitting the pro se appellant, Sherry Boeding, to show cause why the appeal should not be dismissed as untimely.

Ms. Boeding filed two responses to the order. She does not contest the underlying facts. However, she states that health issues made it difficult for her to follow the rules of court. She asserts generally that the tardiness of the notice of appeal should be forgiven as excusable neglect and the time extended within which to file a notice of appeal, citing, for example, Bishop v. Corsentino, 371 F.3d 1203, 1207 (10th Cir. 2004).

However, Bishop was an appeal from a district court order denying a motion asking for an extension of time to file a notice of appeal. Id. at 1206. Fed. R. App. P. 4(a)(5) permits a district court to extend the time period for filing a notice of appeal under certain circumstances. However, in this instance, Ms. Boeding has not filed a motion in the district court asking for an extension of time to file the notice of appeal. This court does not have the authority to extend the time for the filing; only the district court can do that. Fed. R. App. P. 4(a)(5); Alva v. Teen Help, 469 F.3d 946, 950 (10th Cir. 2006).

Although the court construes a *pro se* litigant's pleadings liberally, a person appearing before this court without counsel "must nevertheless follow the same rules of procedure that govern other litigants." Green v. Dorrell, 969 F.2d 915, 917 (10th Cir. 1992). In civil cases, the failure to file a timely notice of appeal deprives the circuit court of appellate jurisdiction and the appeal must be dismissed. Bowles v. Russell, 551 U.S. 205, 214 (2007). This attempted appeal accordingly must be and is dismissed for lack of

appellate jurisdiction.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "Douglas E. Cressler", written over a horizontal line.

by:  
Douglas E. Cressler,  
Chief Deputy Clerk